



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 10/14/03

AGENDA ITEM 5

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Prevailing Wage

At the September 16 City Council meeting, representatives from the Alameda County Building Trades Council addressed the Council under public comments requesting that the Council entertain adoption of a resolution declaring prevailing wage a matter of statewide concern. As the Council could not act on the matter at that time, it agreed to consider this matter at a future meeting.

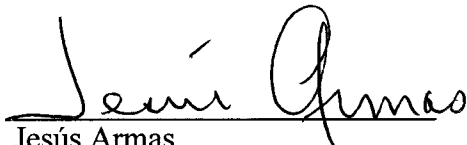
By way of background, the City Attorney reports that in October of 2002, the League of California Cities urged its members to join in a "friends of the court" (*amicus*) brief in the matter of *City of Long Beach v. State of California Department of Industrial Relations*. In that case, the City of Long Beach leased vacant land it owned to the Society for the Prevention of Cruelty to Animals ("SPCA"). The SPCA was required to construct an animal shelter on the property. A portion of the animal shelter was projected to be used by the City's Animal Control Bureau. The Department of Industrial Relations ("DIR") determined that the SPCA facility was a public project requiring the payment of prevailing wages pursuant to the Labor Code. The City of Long Beach filed a legal challenge to the DIR's determination claiming, among other things, that it was a charter city and therefore exempt from the Labor Code's requirements. The trial court ruled in favor of Long Beach and the DIR filed an appeal. The sole purpose of the *amicus brief* was to maintain and reinforce local autonomy of charter cities over municipal affairs. At the request of the League, the City of Hayward joined in the brief in support of the retention of local authority in this area. The Court of Appeals overturned the trial court's ruling in favor of Long Beach, and held that charter cities no longer possessed the local control in the area of public works contracting. We have recently been informed that the California Supreme Court has unanimously consented to review the case. At this point the City has no plans to join in any briefing in the matter.

While the staff understands the rationale expressed by the Building Trades Council, we are unable to support its position declaring prevailing wage a statewide concern. As a charter city, Hayward has taken the initiative and as a matter of policy determined that requiring the payment of prevailing wage in both redevelopment and public works projects is appropriate and beneficial. Moreover, the City has an excellent record in this regard.

In light of numerous examples of action taken by the State which are contrary to local interests, staff is reluctant to endorse any measure which will further diminish the ability of the City to

make decisions which it believes are in the best interest of this community. It would be a cruel irony, indeed, if prevailing wage were determined to be a state matter, only to possibly have to contend with decisions made in Sacramento which preempt the ability of a local agency to include a prevailing wage provision in its bid documents.

Attached for your consideration is the material presented by the Trades Council, along with an alternate resolution developed by staff.

A handwritten signature in black ink, appearing to read "Jesús Armas", written over a horizontal line.

Jesús Armas
City Manager

Attachment

BILL NUMBER: SCR 49 ENROLLED
BILL TEXT
PASSED THE ASSEMBLY SEPTEMBER 11, 2003
PASSED THE SENATE SEPTEMBER 2, 2003

INTRODUCED BY Senator Burton
AUGUST 27, 2003

Senate Concurrent Resolution No. 49--Relative to prevailing wage rates.

LEGISLATIVE COUNSEL'S DIGEST

SCR 49, Burton. Prevailing wage rates: chartered cities.

Existing law generally requires the payment of not less than the prevailing rate of per diem wages and not less than the prevailing rate for holiday and overtime work to persons employed on public works projects that cost more than \$1,000. Existing law requires the Director of Industrial Relations to determine these wage rates and to provide these wage rates to an awarding body, as defined, that requests them.

This measure would reaffirm the intent of the Legislature for the prevailing wage law to apply to all projects subsidized with public funds, including the projects of chartered cities.

WHEREAS, The Legislature has declared that the payment of prevailing wages on public projects is a matter of statewide concern; and

WHEREAS, Payment of the prevailing rate of per diem wages to workers employed on public projects is necessary to attract the most skilled workers for the project and to ensure that work of the highest quality is performed on these projects; and

WHEREAS, Public works projects should never undermine the wage base in a community and the requirement that workers on public works projects be paid the prevailing rate of per diem wages ensures that the local wage base is not lowered (Sec. 1, Ch. 892, Stats. 2002; Sec. 1, Ch. 868, Stats. 2002); and

WHEREAS, The Court of Appeal held in *City of Long Beach v. Department of Industrial Relations* (1 Cal.Rptr.3d 837 (2003 Cal.App. Lexis 1050)), that the state's prevailing wage law addresses matters of statewide concern and therefore applies to projects subsidized by all public agencies, including chartered cities; and

WHEREAS, The state's system for promoting quality apprenticeship training in the construction trades depends upon the incentives provided by the prevailing wage law; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature reaffirms its intent for the state prevailing wage law to apply broadly to all projects subsidized with public funds, including the projects of chartered cities, as the law addresses important statewide concerns; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION #1

WHEREAS, California adopted a prevailing wage law in 1931 to require contractors and subcontractors on public projects to pay construction workers wages at least equal to the wages prevailing in local labor markets;

WHEREAS, the prevailing wage law was later amended to require contractors and subcontractors on public projects to hire apprentices registered in state-approved apprenticeship programs, thereby providing training opportunities for the next generation of skilled workers;

WHEREAS, the prevailing wage law serves important public purposes including protecting workers from exploitation, allowing union contractors and non-union contractors to bid for public work on a level playing field, protecting the wage base in local labor markets, providing opportunities for training skilled workers, attracting the most skilled workers to public projects and avoiding the strain on public resources that occurs when workers are not provided health and pension benefits;

WHEREAS, the California Legislature has declared that the prevailing wage law is "a matter of statewide concern." (Stats 2002, chapter 892, section 1; Stats 2002, chapter 868, section 1).

WHEREAS, the California Court of Appeal recently ruled in *Department of Industrial Relations, et al, v. City of Long Beach*, 2d Civil No. B159333, that the prevailing wage law addresses statewide concerns, and therefore applies to construction projects subsidized by chartered cities, just as it does to projects subsidized by State and local public agencies and political subdivisions.

WHEREAS, the City of _____ supports the goals of the State prevailing wage law;

IT IS HEREBY RESOLVED that the City of _____ endorses the California's Legislature's conclusion that the prevailing wage law addresses statewide concerns and will not participate in efforts to overturn or depublish the *City of Long Beach* decision.

DRAFT 

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION REAFFIRMING THE CITY OF HAYWARD'S
COMMITMENT TO UPHOLDING PREVAILING WAGE LAW
REQUIREMENTS**

WHEREAS, the City of Hayward has historically recognized the importance of requiring contractors and subcontractors to pay prevailing wages on City of Hayward public works projects; and

WHEREAS, the Hayward City Council ("Council") has affirmed its unwavering commitment to uphold prevailing wage requirements on City projects Resolution Number 96-47; and

WHEREAS, Redevelopment Agency for the City of Hayward has adopted Resolution Number RA-88-02 requiring that prevailing wages be paid on redevelopment Agency Projects; and

WHEREAS, since the 1960's the Council has adopted resolutions requiring the City's Standard Public Works Plans and Specifications to contain prevailing wage provisions for City of Hayward Public Works Projects. The latest resolution requiring prevailing wages to be paid for City of Hayward public works was Resolution Number 03-079 adopted on May 27, 2003 ; and

WHEREAS, the Council has previously found that prevailing wage requirements do not inflate the cost of public works and help maintain a highly trained and stable work force who reside in the communities where they are employed; and

WHEREAS, a dynamic and growing construction industry is dependent on a workforce of such highly trained and skilled construction workers; and

WHEREAS, the Council is committed to assuring that its public works do not undermine the wage base in the City of Hayward and therefore require prevailing wages be City of Hayward public works projects; and

WHEREAS, promoting quality apprenticeship training in the construction trades depends upon the incentives contained in the prevailing wage laws; and

WHEREAS, the payment of prevailing wages serves an important public purpose including protecting workers from exploitation, allowing union and non-union

contractors to bid for public works projects on a level playing field, protects the wage base of local labor markets and avoiding the strain on public resources that occurs when workers are not provided health and pension benefit.

WHEREAS, the City of Hayward is aware of and understands the argument put forth in senate concurrent Resolution 49 characterizing prevailing wage leave as a matter of statewide concern.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council recognizes the importance of the current California prevailing wage requirements, once again reaffirms its unwavering commitment to uphold prevailing wage requirements on City Public Works Projects and Redevelopment Agency Projects, and expresses its strong belief that prevailing wages should be paid on all public works projects within the State of California.

BE IT FURTHER RESOLVED that the City of Hayward will not join in amicus participation before the California Supreme Court in the Department of Industrial Relations v. City of Long Beach, 2d Civil No. B159333, case.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward